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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,488	02/15/2001	Cheryl L. Galante	49930.8800	1716
49641	7590	11/15/2007		
THE DIAL CORPORATION 15501 N. DIAL BOULEVARD SCOTTSDALE, AZ 85260			EXAMINER LAMM, MARINA	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 11/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/784,488

Applicant(s)

GALANTE ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5,7-9,11,13,16,20,21,61,63 and 66-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7-9, 11, 13, 16, 20, 21, 61, 63 and 66-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Acknowledgment is made of the amendment filed 5/16/07. Claims pending are 1, 5, 7-9, 11, 13, 16, 20, 21, 61, 63 and 66-70. Claims 1, 7-9, 13, 16, 20, 21, 61 and 63 have been amended. Claims 66-70 have been newly added. Claims 17, 18, 23-25, 27, 28, 30-35, 37-41, 43, 44, 46, 47, 50, 51, 53, 54, 57, 64 and 65 have been cancelled.

#### ***Claim Rejections - 35 USC § 112***

1. Upon reconsideration the new matter rejection set forth in the previous Office Action has been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

2. New grounds of rejection under 35 U.S.C. 103(a) are being introduced based on the examination guidelines for determining obviousness under 35 U.S.C. 103 (a) in view of the Supreme Court decision in *KSR International Co. v. Teleflex Inc.* 82 USPQ2d 1385 (2007) and the Examination Guidelines set forth in the Federal Register (Vol. 72, No. 195, October 10, 2007) and incorporated recently into the MPEP (Revision 6, September 2007).

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 5, 7-9, 11, 13, 16, 20, 21, 61, 63 and 66-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banowski et al. (WO 99/23998 as translated by US 6,569,438) in view of Swaile et al. (US 5,968,489), all of record.

Banowski et al. teach dermatological stick formulations comprising two or more separate, differently composed gel phases, wherein the phases contain deodorant or perspiration-inhibiting actives. See US 6,569,438 @ col. 1, lines 47-60; col. 3, lines 1-

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22. The phases may differ in color and/or content of polymer powder and the active ingredients. See col. 4, lines 38-42. The compositions Banowski et al. contain water, gelling agents, waxes, polyhydric alcohols and other conventional cosmetic agents. See col. 2, lines 3-33; Examples. The core phase of the composition may be cylindrical or "be arranged parallel to the longitudinal axis of the stick". See col. 5, lines 10-18. With respect to the claimed limitation "one portion is firmer than, and provides support for the other portion", it is noted that some compositions exemplified by Banowski et al. contain different amount of waxes in core part ("K") and shell or jacket part ("H"), which would result in different firmness of the compositions. See, for example, col. 10, lines 50-60 (K9 and H6 composition). Banowski et al. does not teach the antiperspirant actives of the instant claims. However, such antiperspirant actives (i.e. aluminum and zirconium salts) are well known and widely used in the art of antiperspirant compositions. See Swaile et al. @ col. 9-10. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to use antiperspirant salts of Swaile et al. in antiperspirant compositions of Banowski et al. for their art-recognized purpose. One having ordinary skill in the art would have been motivated to do this to obtain the desired antiperspirant effect. "Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727,

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1734, 82 USPQ2d 1385, 1391 (2007). In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art." *Id.* at 1739, 82 USPQ2d at 1395. In the instant case, all the claimed element are found in the prior art as discussed above and using the antiperspirant salts of Swaile et al. in the deodorant/antiperspirant compositions of Banowski et al. is nothing more than "predictable use of prior art elements according to their established functions." *Id.* at 1740, 82 USPQ2d at 1396.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Conclusion***

5. No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

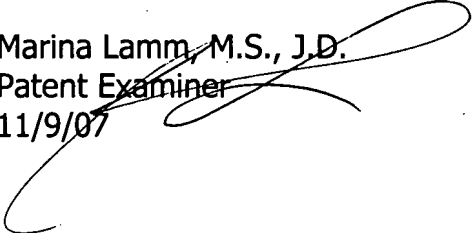
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or

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Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm, M.S., J.D.  
Patent Examiner  
11/9/07



SHEELA PADMANABHAN  
SUPERVISORY PATENT EXAMINER